IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.676 OF 2005

IN

FIRST APPEAL NO.1179 OF 1997

Sardar Rajinder Singh Kartar Singh Sahni ... Applicant

Vs.

Sardar Vajinder Singh Kartar Singh Sahni & Anr. ... Respondents

Mr. Anuj Narula i/b M/s. Jhangiani Narulla & Associates for the applicant.

Ms. R.C. Nichani for respondent 1.

CORAM: SMT. RANJANA DESAI, J.

DATED: 3RD MAY, 2005.

**P.C.**:-

1. This civil application is filed by the appellant, who is original defendant 3. The respondents are real brothers of the applicant. Respondent 1 is the plaintiff.

2. The instant first appeal is filed challenging the judgment and order dated 5th & 8/7/1997 passed by the Bombay City Civil Court at Bombay in L.C. Suit No.4231 of 1984 and S.C. Suit No.5023 of 1984. The suit was for dissolution of partnership and for accounts. By the impugned order, the suit was decreed.

3. It is an admitted position that during trial, the applicant was in possession of the suit premises at Ranade Road, Opp. Bank of Baroda, Dadar (West), Mumbai - 400 028. In the said premises, he has been carrying on business of repairs of cycles and sale of spare parts etc. in the name and style of M/s. Super Bikes. Admittedly, in respect of this business, the Court Receiver has been appointed and the applicant is the agent of the Court Receiver.

4. In this application, it is stated that the business of cycles is no more lucrative and also there is a severe competition in the said business. It is further stated that there are in all, five such cycle shops around and within the radius of one kilometer from the premises from where the applicant's business is being run. Apparently, it is the case of the applicant that the applicant is not making profit and, in fact, the business is being run at loss and, therefore, he wants to switch over to the business of fast food or any other suitable business which will bring more return. Therefore, the applicant seeks permission to change the business of cycles to some other business.

5. I have heard the learned counsel appearing for the parties. In my opinion if, in fact, the applicant is making losses, it would be in the interest of all the parties to allow him to change his business so that the

property can earn more return. Since, in respect of the business, which is being carried on by the applicant, the Court Receiver has been appointed, there are no chances of the applicant committing any acts of waste or inducting any third party in the suit premises. I, therefore, feel that the applicant should be allowed to conduct any other suitable business in the suit premises after putting certain stringent conditions on him. Ms. Nichani, the learned counsel appearing for respondent 1 has pointed out that the applicant has not paid rent of the suit premises and has not paid Income-tax and Sales-tax dues. The learned counsel for the applicant states that the applicant has paid the Sales-tax and the Income-tax dues relating to the business, which is being carried on in the suit premises. If, however, there are any arrears, the applicant will have to pay the same. Since, the Court Receiver is in charge of the suit premises, all these payments will be made to the satisfaction of the Court Receiver. Hence, I pass the following order:

6. The applicant is allowed to change the business, which is being carried on by him in the suit premises in the name of M/s. Super Bikes to the business of fast food or any other suitable business. Since the applicant is the agent of the Court Receiver, he shall furnish all details of the business he is going to carry on in the suit premises to the Court Receiver. Needless to say that applicant will take all necessary steps with prior

intimation to the Court Receiver. The Court Receiver shall ensure that the applicant pays up-to-date arrears of Sales-tax and Income-tax relating to the business carried on by the applicant. The applicant shall also pay the rent of the suit premises till date. The same should be deposited with the Court Receiver. The royalty is fixed at Rs.1000/- per month. The Court Receiver shall pass such other appropriate orders as may be necessary. In the circumstances of the case, the applicant shall submit quarterly statement of accounts to the Court Receiver. Needless to say that the Court Receiver shall take such supervisory steps as may be necessary in the interest of all parties. The appeal is expedited.

7. Civil application is disposed of.

8. All concerned to act on the authenticated copy of this order.

9. Liberty to the parties to move the court for fixing early date of hearing on the next occasion.

(SMT. RANJANA DESAI, J.)